

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5900 of 1995

to

FIRST APPEALNo 5945 of 1995

with

CIVIL APPLICATION No 678 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

DISTRICT PANCHAYAT MEHSANA

Versus

PATEL KANTILAL ISHVARDAS

Appearance:

MR AMIT M PANCHAL for appellant

MR RM CHHAYA for Respondent No. 1

MR MD VAKIL for Respondent No. 2

Mr.M.R. Raval, AGP, for the State in First Appeals
Nos.5900/95 to 5922/95

Mr.H.L. Jani, AGP, for the State in First Appeals
Nos.5923/95 to 5945/95

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 18/02/99

COMMON ORAL ORDER: (Per: Panchal, J.)

1. In these appeals, which are instituted under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the acquiring body, i.e, District Panchayat, Mehsana, has questioned the legality and validity of the common judgment and award December 26, 1994, rendered by the learned Second Joint District Judge, Mehsana, in Land Acquisition Cases Nos. 1076 of 1988 to 1095 of 1988 and 1101 of 1988 to 1126 of 1988. All the abovenumbered references arose out of the common award dated May 21, 1988, which was made by the Special Land Acquisition Officer, under Section 11 of the Land Acquisition Act, 1894. All the references were consolidated with Land Acquisition Case No.1076 of 1988 and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of these appeals by this common order.

2. A proposal to acquire agricultural lands situated in the sim of village Kanthravi, Taluka Patan, District Mehsana, for the public purpose of Manund-Kanthravi-Navapura Road, was received by the State Government from the Executive Engineer, Road & Building, District Panchayat, Mehsana. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Kanthravi were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on August 30, 1984. The land owners were thereafter served with notices, and they had filed their objections against the proposed acquisition. After taking into consideration objections

raised by the owners, the Special Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the agricultural lands situated in the sim of village Kanthravi, which were specified in the notification issued under Section 4(1) of the Act, were needed for the public purpose of Manund-Kanthravi-Nawapura Road. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on May 14, 1987. Thereafter, interested persons were served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.25 per sq.mtr. Having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.40 paise per sq.mtr and Rs.1.50 paise per sq.mtr as well as Rs.1.80 paise sq.mtr having regard to the quality and situation of lands. The claimants were of the opinion that the amount of compensation offered by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Mehsana, which were numbered as Land Acquisition Cases Nos. 1076 of 1988 to 1095 of 1988 and 1101 of 1988 to 1126 of 1988. In the reference applications, it was pleaded by the claimants that having regard to the quality of lands acquired as well as price of lands situated nearby, they were entitled to compensation at the rate of Rs.25/- per sq.mtr. The reference applications were contested by the State Government vide reply Exh.7. In the reply, it was contended by the State Government that the claimants were not entitled to any additional amount of compensation and, therefore, the claim applications should be dismissed. Having regard to the rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.8. On behalf of the claimants, witness, Kantilal Ishwarlal was examined at Exh.56 to substantiate the claim advanced in the reference applications whereas, on behalf of the State Government, witness Gopalbhai Amtharam Prajapati was examined. The parties had also produced previous awards of the Reference Court in support of their respective cases. On appreciation of evidence adduced by the parties, the trial court held that the best evidence in the form of sale instance either of the acquired lands or of any land situated nearby was not produced by the

claimants to enable the Court to determine the market value of the acquired lands. With regard to previous award of the Reference Court rendered in Land Acquisition Cases Nos. 96 to 110 of 1983, the Reference Court noted that the said award was neither comparable nor relevant for the purpose of determining market value of the acquired lands. The Court, thereafter, proceeded to determine the market value of the acquired lands on 'yield basis', and held that those claimants who were awarded compensation at the rate of Rs.1.80 paise per sq.mtr would be entitled to get additional amount of compensation at the rate of Rs.8.00 per sq.mtr. whereas the rest of the claimants would be entitled to additional amount of compensation at the rate of Rs.7.00 per sq.mtr, by common award dated December 26, 1994, which has given rise to the present appeals.

5. Mr. Amit M. Panchal, learned counsel appearing for the appellant, has advanced only two contentions namely:

- (i) that, no opportunity of being heard was given to the acquiring body and, therefore, the impugned award should be set aside, and
- (ii) that, determination of compensation is excessive and, therefore, the appeals should be accepted.

6. The learned Government Counsel appearing for the State Government has adopted the arguments advanced by the learned counsel for the appellants and prayed that the appeals filed by the acquiring body should be allowed.

6. Mr. M.D. Vakil, learned counsel appearing for the claimants, pleaded that sufficient opportunity of hearing was given to the acquiring body, but the acquiring body failed to avail of the said opportunity and, therefore, the appeals should not be allowed on the ground that no opportunity of hearing was afforded to the acquiring body. As far as the question of determination of compensation is concerned, it was pleaded by the learned counsel for the claimants that a just and reasonable award has been passed by the Reference Court and, therefore, the appeals should be dismissed.

7. We have heard the learned counsel for the parties at length and we have also taken into consideration the record of the case. The record of the case indicates that, after the reference applications were forwarded by the Special Land Acquisition officer, Mehsana, to the District Court, Mehsana, as required by Section 18 of the

Act, the learned District Judge had passed an order on September 14, 1988 issuing notice to the parties as well as the acquiring body. The record further indicates that summons issued by the Court was duly received by the appellants on October 25, 1989. Report submitted by the bailiff, who had served notice on the appellants, would indicate that summons was served by him personally on the authorised person. After effecting service on the appellants, a report was made by the bailiff to the learned District Judge, which is on record. Under the circumstance, there is no manner of doubt that the acquiring body was issued notice as well as served with the said notice. As the acquiring body was served with notice, it is not correct to say that no opportunity of hearing was afforded by the Reference Court to the acquiring body. It is true that the acquiring body did not appear before the Reference Court nor did it contest the reference applications, but the Reference Court could not have compelled appearance of the acquiring body before it, and the duty of the Court ended with effecting service of summons on the acquiring body. It was for the acquiring body to avail of the opportunity of hearing which was afforded by the Reference Court. The acquiring body failed to avail of the said opportunity and, therefore, the impugned common award cannot be set aside on the ground that no opportunity of hearing was given to the acquiring body.

8. So far as the question of determination of compensation is concerned, we notice that cogent and reliable evidence was led by the claimants in support of their claim that they were entitled to higher compensation than awarded by the Special Land Acquisition Officer. Witness Kantilal Ishwarlal, who was examined at Exh.156, stated, in his evidence, that all the lands acquired were similar and had the same quality as well as fertility. The witness informed the Court that the acquired lands were being irrigated with the help of tube-well and the claimants were taking three crops in a year. The witness stated before the Court that the claimants were taking crops of cotton, millet, juwar, etc. This assertion made by the witness is amply borne out from the revenue records produced on the record of the case. Exhs. 13 to 55 are extracts of village form No.7/12. A bare look at the revenue records would show that the acquired lands were fertile, irrigated and that the claimants were able to raise different crops in different seasons. The witness informed the court that, after deducting expenses incurred for cultivation, each claimant was able to earn Rs.8000 to Rs.10,000 per bigha. The witness claimed that the claimants were able to raise

15 to 20 Mounds of jeera per bigha; 20 to 30 Mounds of raida per bigha; as well as 40 to 50 Mounds of millet per bigha. The witness further stated before the Court that price of jeera in the year 1984 was Rs.400 to Rs.500 per Mound, and price of cotton per Mound was Rs.150 to Rs.200. The witness further stated that price of raida per Mound was Rs.125 to Rs.150, and price of millet per Mound was Rs.40 to Rs.50/- . It may be stated that though this witness was cross examined by the learned counsel for the State Government, nothing could be brought on record which would indicate that this part of his evidence was in any manner doubtful or not true. Moreover, the claimants had produced price list of wheat, juwar, millet, etc. for the years 1984-85, 1985-86 and 1986-87. The said list was prepared by the Agricultural Produce Market Committee, Mehsana. Price list also supports the evidence of witness Kantilal Ishwarlal regarding different prices of different agricultural produces at the relevant time i.e. the date of publication of notification under Section 4(1) of the Act. The witness had produced previous award of the Reference Court rendered in Land Acquisition Reference Nos. 19 to 32 of 1984 at Exh.62. It related to the lands situated in the sim of village Unjha. Therein, the lands were acquired for the purpose of Unjha-Vadnagar-Ladol road and notification under Section 4(1) of the Act was published in the official gazette on June 11, 1981. After taking into consideration the evidence led by the claimants in the said case, the Reference Court had determined market value of the lands situated in the sim of village Unjha between Rs.55 and Rs.135 per sq.mtr having regard to location of lands. Another award produced at Exh.69/1 was in respect of lands of village Sander, Taluka Patan, District Mehsana. Therein, the lands were acquired for public purpose of a new road going from Unjha to Ranuj via Sander and Sihi villages. Notification under Section 4(1) of the Act was published on May 14, 1979, and the Land Acquisition Officer, by his award dated March 31, 1982, had offered compensation to the claimants at the rate of Rs.90/- per Are. While disposing of the reference applications, the Reference Court awarded compensation to the claimants at the rate of Rs.360/- per Are. In two cases, the Reference Court had also awarded compensation to the claimants at the rate of Rs.540/- per Are.

9. It is, undoubtedly, true that the best method available for determining market value of the acquired lands is sale instance relating to part of the acquired lands or similar lands situated nearby. In the present case, the parties did not produce that best evidence to

enable the Court to determine the market value of the acquired lands. Therefore, the evidence led by the claimants will have to be considered for the purpose of ascertaining market value of the acquired lands on 'yield basis'. Normally, the claimants should produce statistics from the Agriculture Department as to the nature of crops and the prices prevailing at the time of publication of notification under Section 4(1) of the Act, but, unfortunately, neither claimants nor the Government took any steps to adduce that best evidence. The fact remains that neither the appellant nor respondent No.6 adduced any reliable evidence regarding yield or income therefrom. It is true that the claimants should adduce reliable evidence regarding income realized from the crops, but, in the case of State of Gujarat and others vs. Rama Rana and others, Civil Appeals Nos. 16945-16954 of 1996, decided on December 13, 1996, the Supreme Court has ruled that oral evidence of the witnesses regarding income from crops cannot be rejected, merely because statistics from the Agriculture Department as to the yield or income therefrom is not produced, as it is statutory duty of the Court to the society to subject the oral evidence to great scrutiny and thereafter to determine market value of the acquired lands. On subjecting oral evidence of witness Kantilal Ishwarlal to great scrutiny, we found that the acquired lands were fertile as well as irrigated and the claimants were able to raise different crops in different seasons. The evidence of the witness examined on behalf of the claimants would indicate that the claimants were able to raise 15 to 20 Mounds of jeera per bigha; 20 to 30 Mounds of raida per bigha; as well as 40 to 50 Mounds of millet per bigha. The evidence of the said witness further established that price of jeera in the year 1984 was Rs.400 to Rs.500 per Mound, price of cotton per Mound was Rs.150 to Rs.200, price of raida per Mound was Rs.125 to Rs.150, and price of millet per Mound was Rs.40 to Rs.50/-. The Supreme Court, in the abovequoted decision, has held that 50% should be deducted from the average income of crops towards cultivation expenses and multiplier of 10 should be adopted for the purpose of ascertaining the market value of the acquired lands on yield basis. If the amount of compensation payable to the claimants is calculated on the formula suggested by the Supreme Court, we are of the opinion that the claimants would be entitled to more compensation than what is awarded by the Reference Court. However, insufficiency of compensation need not be gone into in the present appeals, as the claimants have neither filed cross appeals nor filed cross objections in the appeals instituted by the acquiring body, for claiming enhanced

compensation. But, on overall view of the matter, we are satisfied that the award of compensation to the claimants at the rate of Rs.10/- per sq.mtr cannot be said to be excessive or on higher side at all warranting interference of the Court in the present appeals. We are satisfied that a just and reasonable award has been passed by the Reference Court and, therefore, the appeals are liable to be rejected.

10. For the foregoing reasons, all the appeals filed by the appellants fail and are dismissed with no order as to costs.

(swamy)